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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation	)))	WT Docket No. 95-157 RM-8643

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**COMMENTS
OF
EAST RIVER ELECTRIC POWER COOPERATIVE**

East River Electric Power Cooperative ("East River"), through counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby respectfully submits its Comments in response to the Commission's First Report and Order and Further Notice of Proposed Rule Making ("First R&O and FNPRM") in the above-referenced proceeding.

I. BACKGROUND

A. East River Electric Power Cooperative

East River Electric Power Cooperative, headquartered in Madison, South Dakota, is a wholesale electric power supply and transmission cooperative serving 25 member cooperative systems and one municipal electric system in eastern South Dakota and western Minnesota. These member distribution systems, in turn, serve more than 70,000 rural service accounts and approximately 250,000 people with retail electric service.

Organized in 1949, East River operates and maintains more than 2,500 miles of high voltage transmission line and 200 substations serving an area of 36,000 square miles, about the same size as the state of Indiana. Besides its headquarters, East River's facilities in Madison include the 24-hour dispatch-operations

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center, vehicle service center, voltage regulator maintenance shop, storage and handling facility for PCB contaminated oil, and warehouse/storage yard for electric equipment. East River also has maintenance crews and facilities located at Onida, Aberdeen, Huron, Milbank, Mitchell and Beresford in South Dakota as well as Marshall, Minnesota.

East River operates a load management system covering the largest geographic area of any similar installation in the United States. East River has annual revenues of more than $60 million and pays $1.7 million each year in taxes.

East River is governed by a 25-member board of directors, consisting of one representative from each member system. East River uses excess capacity in its transmission system to deliver wholesale power to 24 municipal electric systems and other customers in South Dakota, Minnesota and Iowa. East River has invested over $110 million in eastern South Dakota and western Minnesota to provide reliable wholesale electric service to the community.

Because of the geographic size of East River's system, reliable radio communications are vital to ensure system operation and safety. For mobile operation, the system utilizes 17 base stations and operates with hundreds of mobile units. East River is currently beginning an implementation of a large expansion of this mobile system. A SCADA system installed in 1980 provides remote control capability, alarm reporting and instantaneous readout of voltage, power factor, weather, system load and other data.

SCADA information is collected from 108 reporting stations on over 1700 status points from across the system. This information is transmitted to the East River Operations Center in Madison, South Dakota via a microwave communications system consisting of 70 towers and radio stations. East River continously monitors the system and has the ability to remotely reroute power by way of 180 remote control switches at 71 locations. This system enables East River's ability to maintain the highest possible continuity of service.

B. The Microwave Relocation Cost-Sharing Proceeding

The Commission's First R&O and FNPRM is the Commission's attempt to further define the rights and responsibilities between incumbent microwave licensees and PCS licensees seeking to construct and commence operations. Because a single microwave system may impact so many different PCS licenses, and such PCS licensees have the option of "building around" systems if they so desire, crafting rules which balance the equities of both parties has been extremely difficult. This is true even where both the microwave incumbent and the PCS licensee have the best of intentions.

The Commission has now mandated that: (1) an independent third party must be permitted access to the microwave facilities during the mandatory period; and (2) PCS licensees are not required to pay premiums during the mandatory negotiation period. Further, the Commission clarified certain aspects of good faith negotiations and comparable facilities.

The Further Notice portion of the documents requests comments on: (1) shortening the voluntary period and lengthening the mandatory period; and (2) permitting microwave incumbents to seek reimbursement through the cost-sharing plan.

II. COMMENTS

A. System Relocation Planning Is Difficult

From East River's perspective, the voluntary/mandatory period discussion is virtually meaningless. Because the vast majority of East River's microwave system is not in a large urban area, apparently most PCS licensees are not concerned with negotiating with East River during the voluntary period. Of the eight (8) Block A and Block B licensees which will impact portions of East River's microwave system, only one has approached East River thus far. One large PCS licensee has informed East River that it has no interest in negotiating with East River during 1996 at all.

East River's primary concern at this time is the number of PCS licensees which impact East River's system. East River calculates that 50 separate PCS licenses will be issued which will impact some portion of the system. With some duplication of licensees, East River believes that it will need to be concerned with approximately 24 different entities.

For East River to conduct 24 negotiations would be crippling to East River's resources and incredibly expensive. Further, East River has no idea which of these entities will need East River to relocate their system, and which will "engineer around" East River. East River has no idea which entities will need East River to move quickly, and which will wait for ten years and then require East River to move without compensation.

Because of the uncertainty of when (or whether) East River must move and the cost of negotiations, East River is unable to make any type of business plan. While it can be argued that East River should just plan to move its system to 6 GHz, the problem is much more complicated.

The move of a system this large to 6 GHz will be not only expensive, but will require a significant engineering effort. Without knowledge as to when it will need to move or whether (or how much) it will be compensated, East River is unable to make budgetary plans. East River, like most utilities, has a multi-year planning cycle, and must build a cash reserve to fund any costs which may be necessary for the change-over. This requires the estimation of customer power bills to build sufficient reserves over a period of years.

Secondly, the equipment which will be utilized by East River will need to serve East River's communications needs for many years. As with any other city or combination of cities, East River's service area experiences an increase in the number of electric customers over time. East River must ensure that sufficient additional capacity exists on the system when required to meet the demand. This requires advance planning for system capacity upgrades. Naturally, such planning involves 6 GHz equipment. However, without knowing the time schedule in which different PCS licensees will need portions of East River's system relocated, East River cannot evaluate whether it needs to make conversions prior to being told by PCS licensees when (or if) they will require East River to convert.[1]

A relocation of portions of the system in stages is not an adequate answer to East River's relocation difficulties. In planning system upgrades, East River may decide that its long-term capacity need is for a digital 6 GHz system. Converting the East River system in stages to a digital system will result in a significant expense of a series of analog-to-digital transitions. This is necessitated by the fact that different PCS licensees have an interest in different portions of East River's system, which may not be in contiguous links. East River's only contact to date is with a PCS licensee which would like to relocate five of East River's microwave hops.[2] However, these five hops are spread throughout East River's system, and are not contiguous.[3] Therefore, multiple analog-to-digital transitions will be required,

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[1]This should not be taken to imply that East River is demanding that PCS licensees pay for system upgrades. Certainly, if the PCS licensees wants East River to move immediately, the payment of system upgrades is an enticing incentive and can be agreed to by the parties. However, if PCS licensees do not want East River to move for ten years, East River must decide if it will need additional capacity before that time, as well as factor in the cost which must be passed onto its customers if licensees wait beyond the compensation period. In sum, the uncertainty precludes reasonable business planning.

[2]Obviously, East River is not an entity which CTIA has complained is committing extortion in the negotiation process, since East River hasn't been negotiating!

[3]Further, the PCS licensee has no desire to relocate the entire system and seek compensation from other PCS licensees which will benefit from East River's relocation, thus negating East River's ability to have a single relocation,.

which will be useless when the conversion is completed. This results in a needless expenditure of considerable funds and engineering time.

Even if East River elects to keep an analog system, albeit at 6 GHz, a single system change-out is necessary. Maintenance on a loop system such as that utilized by East River with multiple frequencies bands is difficult. The base-band tones and switching which is critical in East River's system is very complicated with incompatible equipment. The utilization of a Network Management System such as currently utilized by East River is also difficult with incompatible equipment. Finally, buying system equipment in stages over a period of years results in higher equipment costs and the possibility that additional compatible equipment may not be readily available in later years. Conversion with an analog system as a "temporary" measure would be expensive, requiring a second replacement cycle as well as two sets of training for maintenance personnel.

Additionally, East River will need to create a channel reuse plan for the entire system. As time passes, some frequencies would no longer be available (as they would be licensed to others), foiling East River's plans. In contrast, system-wide replacement would allow East River to design replacement paths in the most efficient manner. Some sites might need to be physically relocated to avoid excessively long 6 GHz paths. Once a few paths are replaced, this option would no longer be available, requiring the added expense of some intermediate sites.

A system-wide replacement would also allow redundant operation during the changeover, with little downtime (critical for a utility). A path-by-path conversion would require many long duration outages.

B. A Single Relocation Negotiation Requirement Is Needed

East River does not believe that its situation is unique amongst microwave licensees. East River simply cannot enter into 40 negotiations, and East River cannot relocate slivers of it's system on a piece-meal basis when each PCS licensees decides that it is time to negotiate. Further, East River must have a means by which it can plan its relocation, know what costs will be covered, and what costs must be borne by East River's customers.

East River has three (3) recommendations that it would like the Commission to consider:

(1). East River recommends that the Commission require, within a certain number of months after adoption of a Report and Order, that all PCS licensees inform each microwave licensee whether the PCS licensee plans on requiring relocation of the microwave facility at some time, and whether such relocation will be during or after the compensation period. In this manner, microwave incumbents will be able to make business decisions.

(2). East River supports the Commission's proposal that microwave incumbents who relocate links themselves should be permitted to collect reimbursement through the Commission's cost-sharing plan.[4] In this regard, East River supports the Comments of

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[4] First R&O and FNPRM at para. 98.

UTC (of which East River is a member). As noted by UTC, for incumbents like East River, expansion of the cost-sharing rules would permit a single conversion, minimizing the dangers discussed above. PCS licensees seeking a later implementation in rural areas would have the added benefit of being able to deploy their systems immediately without regard to incumbents.

East River agrees with UTC that incumbents should retain documents supporting relocation costs for which reimbursement is sought, with reimbursement on a pro-rata basis from PCS licensees as determined by the Proximity Threshold test. With regard to this test, East River believes that it is sufficient to minimize disputes over eligibility for inclusion in cost-recovery. East River also agrees with UTC that microwave incumbents relocating their system should be treated as the initial relocator with regard to the cost-sharing formula.

East River believes that incumbent relocation can be performed without concern that the incumbent will "gold-plate" the system. By retaining supporting documentation, all costs can be closely scrutinized. Further, the Commission's reimbursement cap prevents most abuse.

III. <u>**CONCLUSION**</u>

WHEREFORE, East River Electric Power Cooperative hereby respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

EAST RIVER ELECTRIC
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